

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

VERNON H. ANDREWS,

Plaintiff,

-against-

3:13-CV-1112 (LEK/DEP)

AMUSEMENTS OF AMERICA; *et al.*,

Defendants.

---

**ORDER**

This matter comes before the Court following a Report-Recommendation filed on November 18, 2013, by the Honorable David E. Peebles, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 5 (“Report-Recommendation”). Judge Peebles recommended that Plaintiff’s Complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e). See generally Report-Rec.; Dkt. No. 1 (“Complaint”).

A district court must review *de novo* any objected-to portions of a magistrate judge’s report-recommendation or specific proposed findings or recommendations therein and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b); accord FED. R. CIV. P. 72(b); see also Morris v. Local 804, Int’l Bhd. of Teamsters, 167 F. App’x 230, 232 (2d Cir. 2006); Barnes v. Prack, No. 11-CV-0857, 2013 WL 1121353, at \*1 (N.D.N.Y. Mar. 18, 2013). If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Chylinski v. Bank of Am., N.A., 434 F. App’x 47, 48 (2d Cir. 2011); Barnes, 2013 WL 1121353, at \*1; Farid v. Bouey, 554 F. Supp. 2d 301, 306-07 & n.2 (N.D.N.Y. 2008); see also Machicote v. Ercole, No. 06 Civ. 13320, 2011 WL

3809920, at \*2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”).

Plaintiff has filed Objections to the Report-Recommendation. Dkt Nos. 6; 6-1. (“Objections”). The Objections fail to respond in any meaningful or intelligible way to the grounds upon which the Report-Recommendation recommended dismissal of the Complaint: (1) the Complaint’s failure to allege facts suggesting that any of the Defendants were acting under color of state law or were personally involved in the deprivation of Plaintiff’s rights; and (2) the “largely unintelligible” nature of the Complaint. See generally Report-Rec.; Objs. The Court therefore reviews the Report-Recommendation for clear error. After a thorough review of the Report-Recommendation and the record, the Court has determined that the Report-Recommendation is not subject to attack for clear error or manifest injustice.

Accordingly, it is hereby:

**ORDERED**, that the Report-Recommendation (Dkt. No. 5) is **APPROVED** and **ADOPTED in its entirety**; and it is further

**ORDERED**, that Plaintiff, if he wishes to pursue this action, must file an amended complaint that remedies the deficiencies identified by the Report-Recommendation and complies with the Federal Rules of Civil Procedure and the Local Rules **within thirty (30) days** of the filing date of this Order; and it is further

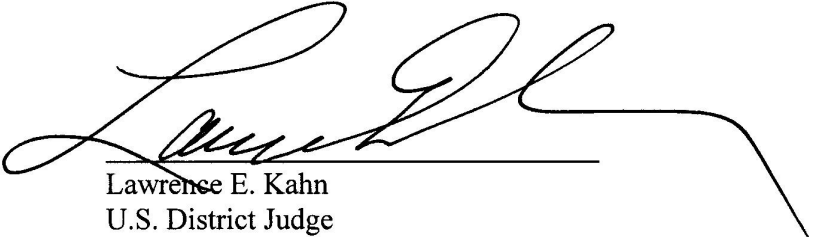
**ORDERED**, that if Plaintiff fails to timely file an amended complaint as directed above, the Clerk of the Court shall enter judgment indicating that the Complaint (Dkt. No. 1) is **DISMISSED**

**with prejudice** without further order of the Court pursuant to 28 U.S.C. § 1915(e) for failure to state a claim upon which relief may be granted. In that event, the Clerk of the Court is directed to close this case; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order upon the parties to this action.

**IT IS SO ORDERED.**

DATED: December 20, 2013  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge